

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDDIE J. JONES,

Plaintiff,

CIV S-04-0792 GEB PAN PS

v.

SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT,

FINDINGS AND RECOMMENDATIONS

Defendant.

—oOo—

On April 21, 2004, this court granted plaintiff's application to proceed in forma pauperis and directed the filing of his complaint. Plaintiff, no longer a prisoner, alleges his civil rights under 42 U.S.C. § 1983 were violated when he was sentenced by the wrong court to state prison despite a probation recommendation of release, and transported to prison by the Sacramento County Sheriff's Department without the proper paper work.

1 Defendant moves to dismiss plaintiff's complaint pursuant
2 to Fed. R. Civ. P. 12(b)(6) (failure to state a claim for which
3 relief can be granted). Plaintiff has filed no opposition,
4 properly construed as acquiescence to the motion (E. D. Cal. L.
5 R. 78-230(c), 11-110, and 83-183). The court vacates the hearing
6 scheduled on this matter for May 11, 2005, and makes these
7 findings and recommendations.

8 Plaintiff has properly named only the Sacramento County
9 Sheriff's Department as defendant in this action (see Complaint
10 file stamped April 21, 2004), against whom he has failed to state
11 any federal cause of action. Accordingly, defendant's motion to
12 dismiss should be granted.

13 These findings and recommendations are submitted to the
14 Honorable Garland E. Burrell, Jr., the United States District
15 Judge assigned to this case. 28 U.S.C. § 636(b)(1). Written
16 objections may be filed within ten days after being served with
17 these findings and recommendations. The document should be
18 captioned "Objections to Magistrate Judge's Findings and
19 Recommendations." The failure to file objections within the
20 specified time may waive the right to appeal the District Court's
21 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: May 23, 2005.

23 /s/ Peter A. Nowinski
24 PETER A. NOWINSKI
25 Magistrate Judge
26